

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Court
Southern District of Texas
FILED

OCT 2 2002

Michael N. Milby, Clerk

UNITED STATES OF AMERICA ex rel.)
[UNDER SEAL],)

Plaintiffs,)

v.)

[UNDER SEAL],)

Defendants.)

UN-SEALED PER #42

CASE NO. H-99-1031

FILED IN CAMERA
and UNDER SEAL

**UNITED STATES' NOTICE OF ELECTION
TO INTERVENE IN PART AND TO DECLINE IN PART**

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA <u>ex rel.</u>)	
DARRYL L. KACZMARCZYK, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. H-99-1031
)	
SCCI HEALTH SERVICES CORP. ,)	
<u>et al.</u> ,)	FILED IN CAMERA
)	<u>AND UNDER SEAL</u>
Defendant.)	
_____)	

UNITED STATES' NOTICE OF ELECTION
TO INTERVENE IN PART AND TO DECLINE IN PART

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2) and (4)(A), the United States hereby intervenes in Count II of the Relators' First Amended Complaint. The Court is further notified that the United States declines to intervene in Counts I and III of the Relators' First Amended Complaint. *See* 31 U.S.C. § 3730(b)(4)(B).

As to Count II, in which the United States has elected to intervene, the United States respectfully requests that it be granted sixty days from the date of the Order attached hereto in which to file and serve its complaint. The United States also requests that the Relators be given sixty days in which to file a second amended complaint regarding Counts I and III. ¹

With respect to Counts I and III of Relators' First Amended Complaint, in which the

¹ Assuming Relators proceed with the remaining two allegations, two distinct complaints, one filed by the United States and one filed by the Relators, will exist.

government has declined to intervene, the Court is respectfully referred to 31 U.S.C.

§ 3730(b)(1), which allows Relators to maintain the action in the name of the United States; providing, however, that the “action may be dismissed only if the Court and the Attorney General give written consent to the dismissal and their reasons for consenting.” Id.

Therefore, the United States requests that, should either the Relators or the defendants propose that Counts I and/or III of any complaint filed by Relators be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.

The United States requests that all pleadings pertaining to any complaint filed by Relators be served upon the United States. The United States also requests that orders issued by the Court be sent to the United States’ counsel. *See* 31 U.S.C. § 3730(c)(3). The United States reserves its right to order any deposition transcript and to intervene as to the Relators’ claims at a later date.


Finally, the United States requests that only the Complaint, the First Amended Complaint, this Notice, and the Court’s Order hereto be unsealed. All other contents of the Court’s file in this matter (including, but not limited to, applications filed by the United States for an extension of the sixty-day investigative period or for any other reason, oppositions filed by the United States in response to the Relators’ motions, reply briefs, memoranda, and supporting documents) should remain under seal and not be made public or served upon the defendants.

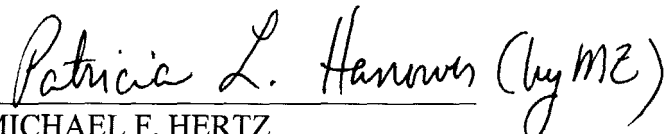
A proposed order accompanies this Notice.

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General

MICHAEL T. SHELBY
United States Attorney

By: 
MICHELLE ZINGARO
Assistant United States Attorney
State Bar No. 12345500
Fed. Bar No. 14463
910 Travis St., Suite 1500
P.O. Box 61129
Houston, Texas 77208
Telephone: (713) 567-9512
Facsimile: (713) 718-3303

By: 
MICHAEL F. HERTZ
POLLY A. DAMMANN
PATRICIA L. HANOWER
Civil Division
Commercial Litigation Branch
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-4397

Dated: October 2, 2002

IN THE UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA ex rel.)
DARRYL L. KACZMARCZYK, et al.,)
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Plaintiffs,)
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SCCI HEALTH SERVICES CORP. ,)
et al.,)
)
Defendant.)
_____)

CIVIL ACTION NO. H-99-1031

FILED IN CAMERA
AND UNDER SEAL

ORDER

The United States having intervened in part in this action, pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4), the Court rules as follows:

IT IS ORDERED that,

1. Relators' Complaint and First Amended Complaint shall be unsealed;
 2. the United States shall have sixty days in which to file and serve its own complaint;
 3. Relators shall have sixty days in which to file and serve their own second amended complaint;
 4. all other contents of the Court's file in this action remain under seal and not be made public or served upon the defendants, except for this Order and The Government's Notice of Election to Intervene in Part and to Decline in Part;
 5. the seal be lifted as to all matters occurring in this action after the date of this Order;
- and
6. the defendants shall respond to the United States' complaint within 20 days after being

served; and

7. with respect to Counts I and III of the Relators' First Amended Complaint, in which the government has declined to intervene,

a. Relators shall have sixty days in which to file and serve an amended complaint upon defendants;

b. the defendants shall respond to Relators' amended complaint within 20 days after being served;

c. the parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C.

§ 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in said counts, for good cause, at any time;

d. all orders of this Court shall be sent to the United States; and

e. should the Relators or the defendants propose that any of these counts be dismissed, settled, or otherwise discontinued, the Court will solicit the written consent of the United States before ruling or granting its approval.

IT IS SO ORDERED.

This ____ day of _____ 2002.

HONORABLE JOHN D. RAINEY
United States District Judge

Certificate of Service

I hereby certify that on October 2, 2002, the United States' Notice of Election to Intervene in Part and to Decline in Part, and Proposed Order were mailed, first-class mail, postage prepaid to:

E.D. McKinney, Jr., Esq.
2951 Marina Bay Drive 130-286
League City, Texas 77573

Donald Patrick McKenna, Jr., Esq.
Scott A. Powell, Esq.
Hare, Wynn, Newell & Newton
2025 Third Avenue North, Suite 800
Birmingham, Alabama 35203

Jennifer M. Verkamp, Esq.
Helmer, Martins & Morgan Co.
Fourth & Walnut Centre, Suite 1900
105 East Fourth Street
Cincinnati, Ohio 45202-4008

(Attorneys for Relators)

A handwritten signature in black ink, appearing to read "Marie H. Southern", written over a horizontal line.

MARIE H. SOUTHERN

Legal Assistant for Michelle Zingaro, AUSA